U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30315970

Date: APR. 26, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, an interior design firm, seeks classification for the Beneficiary as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary met the initial evidence requirements of the requested classification through evidence of a one-time achievement (a major, internationally-recognized award) or by meeting at least three of the ten evidentiary criteria at 8 C.F.R. 204.5(h)(3). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility as an individual of extraordinary ability, a petitioner (or anyone on the petitioner's behalf) must establish that they:

- Have extraordinary ability in the sciences, arts, education, business, or athletics;
- Seek to enter the United States to continue work in their area of extraordinary ability; and that
- Their entry into the United States will prospectively substantially benefit the United States.

Extraordinary ability must be demonstrated by evidence of sustained national or international acclaim as well as extensive documentation that their achievements have been recognized in the field. Section 203(b)(1) of the Act.

The implementing regulation further states that the term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." It also sets forth a multi-part analysis. A petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If such evidence is unavailable, then they must alternatively provide evidence that meets at least three of the ten listed criteria, which call for evidence about other awards they may have received, published material about them in qualifying media, and their authorship of scholarly articles, among other types of evidence. 8 C.F.R. §§ 204.5(h)(2),(3).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination, assessing whether the record shows that the individual possesses the acclaim and recognition required for this highly exclusive immigrant visa classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is an interior design firm, and the Beneficiary is its founder and principal designer. He is a graduate of the [redacted] and states that he intends to continue to work in his field in the United States through his current role.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must show that he satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Beneficiary did not meet any of the seven evidentiary criteria under which evidence was submitted. On appeal, the Petitioner asserts that he meets the following five of the evidentiary criteria:[1]

- (i) Lesser nationally or internationally recognized awards for excellence in the field of endeavor
- (iv) Participation as a judge of the work of others in the same or an allied field
- (v) Original artistic contributions of major significance in the field
- (viii) Performance in a leading or critical for an organization or establishment with a distinguished reputation
- (ix) Commanded a high salary or other significantly high remuneration for services in comparison with others in the field

[1] On appeal, the Petitioner does not contest the Director's findings regarding the criteria at 8 C.F.R. § 204.5(h)(3)(iii) or (vii), relating to published material about the Beneficiary and the display of his work at artistic exhibitions or showcases, respectively. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). We will therefore not address these evidentiary criteria in our decision. While the Petitioner does not directly address the criterion at 8 C.F.R. § 204.5(h)(3)(iv), it does make assertions regarding the Director's treatment of evidence submitted in support of its claim under that criterion.

After reviewing all of the evidence in the record, we find that the Petitioner has not established that the Beneficiary meets the initial evidence requirements for the requested classification.[2]

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)

The Director determined in their decision that the Petitioner had not submitted sufficient evidence of the Beneficiary's' participation as a judge, declining to consider reference letters and what they considered to be the assertions of counsel. They also concluded that the Petitioner had not shown that this criterion does not apply to the Beneficiary's occupation, and thus rejected his claim to this criterion based upon comparable evidence.

For comparable evidence to be considered, a petitioner must first show that a criterion does not readily apply to their occupation. 8 C.F.R. § 204.5(h)(4). On appeal, the Petitioner asserts that the Director erred in not considering the response to the Director's request for evidence (RFE) which was signed by the Beneficiary. In that RFE response, the Petitioner asserted that while formal interior design competitions exist in which the work of those in his field are judged, "many are focused on architecture or commercial space interior design, rather than residential interior design, rendering the category of judging the work of others in the field not easy to meet for residential interior designers." In support of this statement, the Petitioner submitted what appear to be pages from an unknown website that form part of a list of interior design awards. But in addition to not revealing the source of this information, this evidence does not include the complete article or list of such awards, and thus does not present an accurate picture of the number of opportunities for interior designers to serve as the judge of the work of others in their field. It therefore does not support the Petitioner's assertion that this criterion does not readily apply to the Beneficiary's occupation.[3]

We further note that even if we were to conclude that this criterion is not readily applicable to the occupation of interior designer, the Petitioner has also not established that the alternative evidence he has submitted is comparable to evidence of judging the work of others in the Beneficiary's field. The Petitioner asserted in his RFE response that the Beneficiary's work as "a key voice of interior design and an expert evaluator of (often-non-individualized) design work and trends" should be considered to be comparable, while admitting that this does not involve "direct assessment of an individual peer." It relied on a letter from an official of the [redacted], which states that in his role as an "Insider" for this organization, the Beneficiary visited several industry trade shows and "offer[ed] his expert opinion" of kitchen and bath products and design concepts. While a press release announcing the [redacted] Insiders for 2016 (including the Petitioner) states that these

[2] The Petitioner submits an expert opinion letter with its appeal brief. Because the Petitioner was put on notice of the deficiencies in the evidence originally submitted and given a reasonable opportunity to respond, we will not consider this evidence for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").

[3] We take administrative notice that publicly available information provides a lengthy list of awards for those in the interior design profession. https://interiordesign.guide/interior-design-awards/, accessed on April 25, 2024.

individuals will represent the association at trade shows and "share their perspective with industry professionals and consumers," this evidence is insufficient to establish that this type of promotional and advocacy activity is comparable to judging the work of others in the interior design field. Accordingly, the Petitioner has not established that the Beneficiary meets this criterion, through either primary or comparable evidence.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v)

In order to satisfy this criterion, an individual must establish that not only have they made original contributions, but that those contributions have been of major significance in the field. For example, they may show that their contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. *See Visinscaia*, 4 F. Supp. 3d at 134-35.

Here, the Petitioner asserts on appeal that the Beneficiary's "artistic vision is an original contribution sought out by prominent institutions in the design industry." It relies primarily upon the reference letters submitted by other experts in his field to make this point, but neither the Petitioner nor the authors of the letters identify a specific original contribution of the Beneficiary's that has been of major significance in the field of interior design.

For example, a letter from D-S-, President of [redacted] applauds the Beneficiary's residential design work, notes his media coverage in media focusing on interior design, and verifies that the school gave him its Rising Star Award in 2019. But while noting the Beneficiary's accomplishments, the letter does not specify an original contribution made him to the field of interior design that resulted in this award.

Another letter was written by N-H- of the [redacted] who verifies that the Beneficiary was selected in 2014 as one of the interior designers to participate in its annual show house. The writer praises his work as part of this show house, and states that being selected "means that you have arrived," but does not indicate that this design influenced other designers or that elements of the design were implemented elsewhere. While the Beneficiary's work on the show house was original and a contribution to this project, this evidence does not establish that it was of major significance in the overall interior design field. *See Amin v. Mayorkas*, 24 F.4th 383, 393-394 (5th Cir. 2022) (finding that contributions which were not adopted beyond a petitioner's employer do not meet this criterion).

A third letter, from P-J- of [redacted] a "network of regional shelter magazines," confirms that two of the Beneficiary's interior design projects were published in the magazine in 2014 and 2015. While she notes that these projects were selected to be published in the magazine from among hundreds of submissions, and praises the Beneficiary's work, the writer does not suggest that the projects constituted contributions that impacted the interior design field overall to the extent that they were of major significance.

Although these letters show that other experts in the field of interior design hold the Beneficiary's work in high regard, they do not establish that he has made an original contribution of major significance in his field. As such he does not meet this criterion.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix)

To meet the requirements of this criterion, an individual must establish through documentary evidence that they have commanded a salary or remuneration, and that that salary or remuneration was high or significantly high, respectively, in comparison to others in their field.

Here, the Petitioner submitted a letter from the Beneficiary's tax advisor stating that over the past ten years, he has earned from $90,000 - $110,000. It also submitted comparative salary information from a variety of sources. This included a report from salary.com which indicated that the average salary for an interior designer in New York City in 2023 was $59,727, and that the top 90% of interior designers earned $70,748. Similar information from the careerexplorer.com website indicated that median salary was $64,200 and that the top 20% of interior designers earned $118,200. Finally, evidence showing salary data from the U.S. Bureau of Labor Statistics (BLS) indicates that the annual mean wage for interior designers in New York City was $75,190.

We initially note that because the letter from the tax advisor did not include specific salary information for each year, no other information was submitted (such as IRS Forms W-2 or 1099 and federal tax returns), and comparative salary information was submitted pertaining only to 2022 and 2023, we must assume for purposes of comparison that the Beneficiary's salary was at the bottom of the range provided.

In addition, the wide disparity between the two commercially-sourced sets of data, particularly at the higher end of the ranges provided, and the lack of information in the record regarding the sources and methods used in compiling this data, makes this evidence unreliable for purposes of comparison. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual, (stating that websites employing user-reported data may have too few users or otherwise not be credible.) We will therefore consider only the more reliable data from the BLS. That data shows that the bottom of the range of the Beneficiary's salary as reported by his tax advisor is higher than the mean salary for interior designers in New York. However, the Director concluded in their decision that the mean salary does not provide a sufficient basis for comparison to show that the Beneficiary's salary was high in comparison to others in his field.

On appeal, the Petitioner asserts that the Director erred by requiring evidence of the wages of other leading designers. However, we note that in *Matter of Racine*, 1995 WL 153319 at *1, *4 (N.D. Ill. Feb. 16, 1995), the court stated:

> [T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*,

No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Without reliable information in the record showing high salaries for experienced interior designers in New York, we can only conclude that the Petitioner has shown that the Beneficiary's salary is somewhat above average, and thus does not meet the plain language of this criterion.

B. Final Merits Determination

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. Although it claims that the Beneficiary is eligible for two additional criteria on appeal, relating to lesser awards at 8 C.F.R. § 204.5(h)(3)(i) and leading or critical role at 8 C.F.R. § 204.5(3)(3)(viii), we need not reach these additional grounds because the Beneficiary is unable to meet the minimum of three evidentiary criteria. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding those additional criteria. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). Accordingly, we need not provide the type of final merits determination referenced in Kazarian, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Beneficiary has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of the Beneficiary's work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Beneficiary has garnered national or international acclaim in the field, and that he is one of the small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

C. Prior O-1 Approvals

We acknowledge that the Beneficiary is currently in O-1B status, a classification reserved for nonimmigrants of extraordinary ability in the arts. Although USCIS has approved O-1 nonimmigrant visa petitions filed on behalf of the Beneficiary, the prior approvals do not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different statute, regulations, and case law. The nonimmigrant and immigrant categories have different criteria, definitions and standards for persons working in the arts. "Extraordinary ability in the field of arts" in the nonimmigrant O-1 category means distinction. 8 C.F.R. § 214.2(o)(3)(ii). But in the immigrant context, "extraordinary ability" reflects that the individual is among the small percentage at the very top of the field. Moreover,

each petition is separate and independent and must be adjudicated on its own merits, under the corresponding statutory and regulatory provisions.

ORDER: The appeal is dismissed.